IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

COMPANY APPLICATION No 69 of 2000

in

COMPANY PETITION No 212 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE K.A.PUJ

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

T.L.A.

Versus

O. L. OF STAR OF GUJARAT MILLSCO. LTD.

Appearance:

1. COMPANY APPLICATION No. 69 of 2000

MR DS VASAVADA for Petitioner No. 1

OFFICIAL LIQUIDATOR for Respondent No. 1

MR SS PANESAR for Respondent No. 2

SINGHI & BUCH ASSO. for Respondent No. 3

MR RM DESAI for Respondent No. 4

CORAM : MR.JUSTICE K.A.PUJ

Date of decision: /01/2003

CAV JUDGEMENT

This Company Application is filed by Textile Labour Association and in the Judge's Summons taken out by the said Association, a prayer is made seeking direction to pay an amount of Rs. 5,15,76,953.00 to 607 workmen of the Star of Gujarat Mills Co. Ltd. (In Liquidation). By way of an interim relief, it is prayed for that an amount at the rate of 10 per cent of the amount claimed may be paid to all those workmen.

2. In support of the Judge's Summons, an Affidavit is filed by one Mr. Manilal G. Parmar, the Secretary of the applicant Association wherein it is, inter alia, stated that by a separate order passed by this Court, the plant and machinery have been disposed of by the Sale Committee and an amount of Rs. 1,50,00,000/= has been realised. It was further stated that the claim of 607 workmen of the Star of Gujarat Mills Co.Ltd (In Liqn.) has already been lodged with the Official Liquidator. It was further stated that since the amount of Rs. 1,50,00,000/= was lying with the Official Liquidator and since the land and building of the said Mills Company were yet to be sold the amount which was already realised may be directed to be paid to the workmen towards their dues. Along with the said Affidavit a report of workers due payment prepared by one Mr. Nikhil Shah was produced.

3. In response to the above Judge's Summons, the Official Liquidator has filed his report on 4-9-2000 stating that he has appointed Mr. R. Choudhary & Associates, Chartered Accountants to verify the claim of the workers and after verification by the said Chartered Accountant the amount was reduced to Rs. 4,89,03,920/=. He has further submitted that the secured creditors have not furnished their claims duly verified/certified by their Chartered Accountants as on the date of winding up, i.e., 14-6-1999. The Central Bank of India, who is one of the secured creditors and impleaded as respondent No.2 in the present application has filed its affidavit through its Senior Manager, on 27-9-2000 stating, inter alia, that the Central Bank of India had also lent and advanced sizeable financial assistance to the company in liquidation and on the date of the winding up of the company, i.e., 14-6-1999, a sum of Rs. 16,29,43,383/= was due and payable by the said company to the Bank. It was further stated that the Bank has already filed an Original Application No. 279 of 1999 for recovery of Rs. 16,02,04,845.74 ps.in the Debt Recovery Tribunal, Ahmedabad and the said application is pending before the D.R.T. It was further stated in the affidavit that the bank has already incurred a sum of Rs. 7,05,220.37 ps. towards insurance, security and publication charges which

should be paid to the bank before making distribution of any payment to any one.

4. Considering the prayer made in the Judge's Summons, the Official Liquidator's Report filed on 4.9.2000 as well as on 22-9-2000 and the affidavit filed on behalf of Central Bank of India on 27.9.2000, this Court has passed an order on 19.10.2000 directing the Official Liquidator to make the payment of Rs. 30 lakhs to the workmen and for that purpose the Official Liquidator was further directed to encash the fixed deposits prematurely to the extent of Rs. 30 lakhs. This Court has further directed the Liquidator in the said order to verify the claim of expenditure incurred by the Central Bank of India and after verification if it was found that the Bank has spent the said amount, the same was directed to be paid to the Bank. Pursuant to the said direction, the Official Liquidator has verified the claim of expenditure made by the bank and submitted that the bank's claim towards expenditure is admissible to the extent of Rs. 4,36,803/= out of which an amount of Rs. 20,000/= has already been paid. This Court vide its order dated 21.12.2000 had directed the Official Liquidator to pay the balance amount of Rs. 4,16,803/= to the bank towards its claim for expenditure. This court has further directed the Official Liquidator to make the payment of Rs. 30 lakhs each to the secured creditors namely Central Bank of India and IIBI as the workers have already been paid Rs. 30 lakhs towards their claim for salary.

5. The Official Liquidator has further filed his report on 28.6.2001, pursuant to the direction issued by this Court on 18.6.2001 wherein it is stated that the Chartered Accountant appointed by the Official Liquidator has submitted his verification report to the Official Liquidator vide his letter dated 18.7.2000 to the tune of Rs. 4,89,83,919.10 ps. It was further stated in the said report that the bank vide its letter dated 19.1.2001 has forwarded a reconciliation statement of workers claim submitted by the Chartered Accountant of the Official Liquidator and the Chartered Accountant of the bank. It was further stated by the O.L. in his report that there was discrepancy as regards the date upto which the debts were to be calculated and other discrepancies were also noticed. It was further stated that the Chartered Accountant of the bank has calculated the claims of workers as on the date of closure of the said company, i.e. 28.4.1998 whereas the Chartered Accountant appointed by the Official Liquidator has calculated the claims of the workers upto the date of the appointment of Official

Liquidator as Provincial Liquidator, i.e., 14.12.1998. However in both the reports the calculation of workers' dues was made on the basis of the strength of 529 workers as against the strength of 607 workers submitted by the applicant-association. As per the report of the Chartered Accountant appointed by the bank, the workers claim was verified to the tune of Rs. 4,38,73,468.01 ps.

6. The Official Liquidator has further filed his report on 29th October 2001 stating, inter alia, that pursuant to the direction issued by this Court, the Official Liquidator has appointed M/s. R. Choudhary & Associates, a firm of Chartered Accountants for the purpose of fixing ratio amongst the secured creditors and the workers of the said Mills Company. The said firm of Chartered Accountants vide its letter dated 29.10.2001 has submitted its report with the Official Liquidator as per the details given in the said report as under:-

Institution	As per C.A. of Central Bank of India	As per C.A. appointed by Official Liquidator.
1.Central Bank of India.	58.21%	57.17%
2.I.I.B.I.	23.48%	23.06%
3.G.I.I.C.	2.37%	2.33%
4.Textile Labour Association.	15.94%	17.44%
	100.00%	100.00%

The Official Liquidator has further submitted in the report that he was having a sum of Rs. 1,17,39,265/= out of which certain amounts towards payment to the security agencies, Official Liquidator's commission and tax liabilities etc., were required to be retained by him and an amount of Rs. 1,00,00,000/= could be distributed amongst the secured creditors as well as the workers.

7. Central Bank of India, the respondent No.2 herein has filed further affidavit-in-reply on the report submitted by the Official Liquidator on 29.10.2001 wherein it is stated that the ratio determined by M/s. R. Choudhary & Associates, which was adopted by the Official Liquidator was not correct. It was submitted that the Bank has caused detailed searches of the said

company's file with the R.O.C. and it was found that no charges in favour of GIIC have been shown to have been registered and hence the Central Bank of India as well as IIBI are the only secured creditors and that the GIIC was not entitled to any priority to receive any amount out of the sale realisation of the assets of the above company. It was further stated that GIIC has not produced any cogent and satisfactory documentary evidence in support of its entitlement to any priority to receive amount.

8. Industrial Investment Bank of India Ltd., the respondent No.3 herein has also filed its affidavit-in-reply on 5th December 2001 raising a dispute with regard to the actual number of workers entitled to claim dues as per Section 529 and 529A of the Companies Act, 1956. It was stated that as per the report of the Official Liquidator, the claim of 607 workers amounted to Rs. 4,89,03,919.10 ps. Based on the said claim the ratio as calculated by the Chartered Accountants came to 17.44% of the total amount to be distributed from realisation of assets of the Mills Company as per the provisions of Section 529 and 529A of the Act. It was further submitted that the total number of 607 workers as claimed by the Textile Labour Association was not at all verified by the Official Liquidator and Chartered Accountants and without any application of mind mechanically calculated the claim and ratio for the purpose of pari passu distribution between secured creditors and the workers. It was further submitted that the Board for Industrial & Financial Reconstruction, by consent of all the secured creditors and workers of the Mills Company in liquidation had sanctioned scheme of rehabilitation, in exercise of powers conferred under Section 18(4) read with Section 19(3) of the Sick Industrial Companies (Special Provisions) Act, 1985, on 19th May 1991. As per the said sanctioned scheme in Clause G, it was agreed between the parties that out of the total 607 workers and 75 staff, 224 workers and 26 staff would be reduced through Voluntary Retirement Scheme. Pursuant to the said agreement the Mills Company in liquidation retrenched a total number of 250 employees which was specifically and categorically reflected at Clause 12.4 in an audit report submitted by Ramanlal G. Shah & Company, Chartered Accountants, dated 28.2.1996. This audit report was carried out from January 1996 to March 1996 at the instance of the management of the mills company in liquidation. It was further submitted that if the effect was given to the said reduction of workers/staff members, the total number of workers as on 28.6.1996 stood reduced to 383 workers. It was therefore submitted that since the mills company went into

liquidation on 14.12.1998 the total number of workers of the mills in company in liquidation entitled for claiming pari passu disbursement was only 383 workers and not 607 workers as claimed by the applicant-association. It was further submitted that the Official Liquidator has not verified any of the documents and details available with him and mechanically calculated the workers' claim without any application of mind and without discharging his obligations and duties as specified under the provisions of the said Act. The respondent No.3 has therefore urged before the Court that the Official Liquidator should be directed to pursue all the relevant documents related to strength of number of workers of the mills company in liquidation and to file his report reflecting actual number of workers working and enrolled on muster roll at the time of winding up of the mills company in liquidation and entitled to claim disbursement as per the provisions of Section 529 and 529A of the Act.

9. Since the dispute with regard to the exact number of workers entitled to pari passu disbursement and the claim of GIIC as secured creditors was raised before the Court, this Court has observed in its order dated 14.12.2001 as under;

> ".....It is not a matter of dispute that as per the scheme worked out, earlier 250 workers/members of the staff were to be retrenched. However, in reality 246 workers/members of the staff were actually retrenched prior to the winding up of the company. As per the say of T.L.A., if the total strength of workers was 607 then in the event of retrenchment of 246 workers, the actual claimant-workers would be much less than 482 calculated by the Chartered Accountant of Central Bank of India. Hence, I am surprised that how T.L.A. has made a claim of entire set of workers i.e. all 607, though substantial number of workers had already got their statutory retrenchment compensation decided under a scheme. Exaggerated or false claims evaluated or calculated without ascertaining correct facts available on record would affect the ratio and the entitlement of amount by Financial Institutions and Secured Creditors and it would give scope to unauthorised persons to pocket same. Therefore, to bring the correct set of facts on record, the Official Liquidator is directed to submit his report clarifying all

these confused contingency and conflicting figures on record....."

10. Pursuant to the directions given in the said order, the Official Liquidator has filed his report on 8th August 2002 wherein it is stated that M/s. R. Choudhary & Associates, firm of Chartered Accountants has clarified the position vide their letter dated 25.3.2002 and as regards the total number of workers as was submitted by them, the total number of workers' claim verified by them for workers eligible for claim was 529 out of 607 workers as proposed by the Textile Labour Association. It was further stated that the documents and information provided to them did not show any workers retrenchment under the voluntary retirement scheme as claimed by the concurrent audit report dated 23.6.1996. It was further stated that the Central Bank of India's auditor has also confirmed the fact that the variance was only because of other facts and not for any dispute for the number of workers. The said auditors have further submitted that they have verified PF register, attendance register, payment register, leave encashment register, leave records etc., and the same was not showing retrenched workers under Voluntary Retirement Scheme. It was further stated that the mills company in liquidation had also appointed many workers after the date of sanction of the scheme by BIFR on 5-8-1991 and also after the concurrent audit report dated 23.6.1996 for which the date of joining of such workers could be verified. The said auditors have, therefore, reconciled the figure as under;

No. of workers and staff as on BIFR Scheme Sanction dated 5/08/91. (606+75)	681
Joined after the 5/08/91.	101
Total :	782
Less: retrenchment as stated in Concurrent auditor report dated 23/06/1996.	- 246
Balance No. of Persons.	536

With regard to discrepancy of Rs. 50 lakhs, it was submitted by the auditors that the reasons for variance were basically due to difference in assumption based on the interpretation of certain important matters pertaining to period of closure, completed year of

service etc. With regard to ratio, considering the claim of GIIC as secured creditor, the auditors have observed that the GIIC was not secured creditor and an alternative ratio calculation was given by them as under;

AS PER THE CHARTERED ACCOUNTANTS APPOINTED BY OFFICIAL LIQUIDATOR

Sr.	Name of the creditor	Amount in Rs.	Ratio
01	Central Bank of India	16,02,04,845.74	58.53%
02	IIBI	6,46,23,683.00	23.61%
03	Textile Labour Association	4,88,84,586.06	17.86%
	Total	27,37,13,114.80	100.00%

AS PER THE CHARTERED ACCOUNTANTS APPOINTED BY CENTRAL BANK OF INDIA

Sr.	Name of the creditor	Amount in Rs.	Ratio
01	Central Bank of India	16,02,04,845.74	59.62%
02	IIBI	6,46,23,683.00	24.05%
03	Textile Labour Association	4,38,73,468.01	16.33%
	Total	26,87,01,996.75	100.00%

The IIBI, respondent No.3 herein, however, submitted vide their letter dated 10.7.2002 that in terms of the Rehabilitation Scheme approved by BIFR, the management had paid retrenchment compensation to 250 workers out of 607 workers and did not have any authority to absorb 105 workers thereafter. It was therefore submitted by them that it would be necessary to ask the erstwhile management to explain this lapse and that Central Bank of India's dues in respect of WCTC 1 and 2 and rehabilitation term loan are secured by pari passu term loan, i.e., first charge on the fixed assets of the company.

11. Heard Mr. DS Vasavada, ld. advocate appearing for the applicant-association, Mr. Panesar, ld. advocate appearing for the Central Bank of India, Mr. Sandeep Singhi, ld. advocate appearing for IIBI, and Mr.

Roshan Desai, ld. advocate appearing for GIIC. Mr. Vasavada has vehemently argued that in support of the applicant's claim he has furnished a detailed report showing the names of 607 workers and making the claim of Rs.5,15,76,953. The ratio should be worked out on the basis of 607 workers and not on the basis of 529 workers as determined by the Chartered Accountants appointed by the Official Liquidator as well as by the Central Bank of India. He has further submitted that the claim of the workers should not be reduced as suggested either by the Chartered Accountant appointed by the Official Liquidator or by the Chartered Accountant appointed by the Central Bank of India. Mr. Sandeep Singhi and Mr. RM Desai, the ld. advocates appearing for respondents No. 3 and 4 respectively have, however, objected to the claim made by the applicant-association. It is submitted that even as per the report of workers due payment prepared by Mr. Nikhil Shah and produced by the applicant-association does not contain the details of the workmen listed at Serial No. 540 to 607. Even with regard to the workers listed at Serial Nos. 528, 532, 534, 535, 536,537, 538 and 539, it is found that they were appointed subsequent to the claim sanctioned by BIFR. Mr. Singhi has therefore submitted that the ex-management had no right to appoint these workmen and no claim can be entertained in respect of these workers. It is further submitted that initially there was difference with regard to the number of workers in the report prepared by the Chartered Accountant appointed by the Official Liquidator as well as by the Chartered Accountant appointed by the Central Bank of India. The reconciliation made also did not give any clear picture about the exact number of workers, as in the said reconciliation, the initial strength of workers was considered as 681 which includes the 75 staff members. He has submitted that the claim of these staff members should not be considered while determining the ratio. Even in this reconciliation, the balance number of persons was shown as 536. In view of these discrepancies in the strength of workers, Mr. Singhi has submitted that no order with regard to the determination of the ratio amongst the workmen and secured creditors can be made and that the Official Liquidator as well as the ex-management of the company in liquidation should be directed to verify about the exact number of workers and thereafter the further order with regard to determination of ratio as well as disbursement of the amount can be passed.

12. I have heard the learned advocates appearing for the respective parties at length and I have also gone through the Company Application, Report filed by the

O.L., as well as the Affidavits-in-Reply filed by the respondents. I have also perused the three different reports prepared at the behest of the applicant-association, the Official Liquidator as well as the Central Bank of India. One thing is very clear that the claim put forward by the applicant-association on the basis of the strength of 607 workmen cannot be entertained and accepted as the necessary details are not there even in the report prepared at the behest of the applicant-association. The first and foremost question which is left for determination to this Court is as to whether the strength of workmen was 529 or even less than that. The another question, which is required to be decided, is as to whether the applicant-association's claim seeking direction to pay an amount of Rs. 5,15,76,953/= to the workmen of the Mills Company can be adjudicated and decided at this juncture, as at present there is nothing on record to show that the entire assets of the Mills Company in liquidation have been sold. On going through the record submitted by the Official Liquidator, it is found that the plant and machineries and other movable assets of the company were sold and an amount of Rs. 1,50,05,000/= was realised by the Official Liquidator. Out of this amount, under the order of this Court, Rs. 30 lakhs each were disbursed in favour of the applicant-association, Central Bank of India, and IIBI. The balance amount was required by the Official Liquidator towards expenses and Liquidator's commission etc. Hence, no further amount is required to be disbursed at present. The question of other disbursement would arise only when the immovable properties of the Mills Company in liquidation are sold. It is, therefore, in the fitness of things that the correct strength of the workers is required to be ascertained by collecting certain further details. The Official Liquidator is, therefore, directed to ascertain from the ex-management with regard to the workmen who were already retrenched as observed by M/s. Ramanlal G. Shah & Company, Chartered Accountants, in their Report dated June 20, 1996. The Official Liquidator is further directed to call for the explanation from the ex-management as to under which authority 101 persons were appointed by them after the Rehabilitation Scheme sanctioned by BIFR. It is open for the Official Liquidator to call for this information either from the ex-management or from M/s. Ramanlal G. Shah & Company, Chartered Accountant who has pointed out this fact in their Report or from IIBI, Ahmedabad Branch Office, Ahmedabad to whom the concerned audit report was forwarded by the auditor. After undergoing this exercise, the Official Liquidator is directed to file a fresh report before the Court. As far as the claim of

GIIC is concerned, at present there is nothing on record to show that the proper charge has been registered in favour of the GIIC. The Official Liquidator is, therefore, directed to call for the necessary details from GIIC. The ratio can be determined thereafter on the basis of this fresh information which would be received by the Official Liquidator.

13. With the aforesaid directions, the present Company Application is accordingly disposed with no order as to costs.

rmr. [K.A. Puj, J.]

After the above judgment is pronounced Mr.Buch learned advocate appearing for Singhi & Buch Associates for respondent no.3 submits that the Hon'ble Court has observed in the judgment that the balance amount was required by the Official Liquidator towards expenses and Liquidator's Commission etc. As a matter of fact, the Liquidator has made the claim regarding the Liquidator's Commission in his report, however, no such claim is adjudicated and hence this observation would create some difficulties in future. Having heard the learned advocate and having perused the judgement, I am of the view that the Liquidator can move appropriate application for claiming the Liquidator's Commission. The present order is passed only with regard to non-disbursement of the balance amount lying with the Liquidator. Hence the balance amount or any part thereof cannot be treated as the amount appropriated towards the Liquidator's Commission. The Court will consider the said claim as and when proper application is made and order of final disbursement would be passed by the Court.

[K.A. Puj, J.]